IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 131 of 1987
WITH
INCOME TAX REFERENCE No 294 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX
Versus
1. YASINBHAI ISMAILBHAI MANSURI
2. RAFIQBHAI ISMAILBHAI MANSURI

Appearance:
MR BB NAYAK FOR MR MR BHATT for Petitioner.
NOTICE NOT RECD BACK for Respondent in ITR No.131/87.
IN ITR 294/87 NONE APPEARED for Respondent though served.

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE D.A.MEHTA

Date of decision: 12/09/2001

COMMON JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The follwoing three questions are referred at the instance of the Revenue.

1 "Whether, in law and on facts, the appellant is right in holding that provisions of section 60 of the Income Tax Act,1961 were not applicable and the addition of 20% share income from M/s.Graduate Picker Marks in the hands of the assessee could not be confirmed ?"

2 "Whether, the tribunal is right in law and on facts in holding that the trust was not revocable and the provisions of sections 61, 63(a) (i) or 63(a)(iii) of the Income-tax Act,1961 were not applicable ?"

3 "Whether, in law and on facts, the Tribunal is right in setting aside the order made by the Income-tax Officer confirmed by the AAC ?"

2 Mr.B.B.Nayak, learned Standing Counsel for the Revenue appears on behalf of the applicant while the respondent-assessee has not been served in Income Tax Reference No.131 of 1987 while in Income Tax Reference No.294/87 though the respondent has been served, none appears on his behalf. However, as we are deciding the matter in favour of the respondent-assessee, we have taken up the matters for final disposal.

3 The Tribunal following its decision for earlier assessment years i.e. assessment years 1975-76 and 1976-77 held in favour of the assessee and since References against that were pending, the Tribunal has made this Reference.

4 At the time of hearing Mr.Nayak has fairly pointed out that in an unreported decision dated 1/8/1996 in Income Tax Reference No.116/88 along with Income Tax Reference No.118/88, this Court has decided the controversy in favour of the assessee. The Court while following the earlier decision in the case of Sunil J.Kinariwala vs C.I.T. 211 ITR 127 and C.I.T. vs. Prashant J.Kinariwala 211 ITR 393 held that the 20% of the share in the firm had to be assessed in the hands of the trust not in the hands of the assessees herein. Following the aforesaid decision of this Court we hold that the Appellate Tribunal was right in holding that the provisions of Section 60 of the Income Tax Act,1961 were not applicable and the addition of 20% share income from M/s. Graduate Picker Works in the hands of the assessee could not be confirmed and further that the trust was not revocable and provisions of Sections 61, 63(a)(i) or Section 63(a)(iii) of the Act were not applicable.

5 We therefore answer question Nos. 1, 2 and 3 in the affirmative i.e. in favour of the assessee and against the revenue.

6 The References stand disposed of accordingly with no order as to costs.

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt